LE COPY

No. 602

Office-Supreme Court, U.S.
FILED
JAN 14 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

CATHERINE LOUISE HARMS, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

MALCOLM R. WILKEY,
Assistant Attorney General,

BEATRICE ROSENBERG,
Attorney,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	5

CITATIONS

CASES:

Pereira v. *United States*, 347 U.S. 1	4-5
United States v. *Kenofskey*, 243 U.S. 440	4
United States v. *Saldonis*, 93 F. 2d 302	4

STATUTE:

18 U.S.C. 2	5
18 U.S.C. 1341	5
18 U.S.C. 2422	2

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 602

CATHERINE LOUISE HARMS, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 22-30) has not been reported.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 1959. The petition for a writ of certiorari was filed on December 21, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether evidence that petitioner induced a girl, then in New Jersey, to come to Virginia for purposes of prostitution supports the finding, implicit in the verdict of guilt, that she "thereby knowingly cause[d]" the girl to travel by common carrier.

STATUTE INVOLVED

18 U.S.C. 2422 provides:

> Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner seeks review of the judgment of the court of appeals affirming her conviction on the second count of the indictment, which charged that she knowingly induced Josephine Bruno to travel in interstate commerce for purposes of prostitution, thereby knowingly causing such woman to be transported by common car-

rier, in violation of 18 U.S.C. 2422, *supra*. Petitioner was sentenced to 30 months' imprisonment, and fined $1,000 on that count.

The evidence showed that petitioner called Miss Bruno, in Atlantic City, New Jersey, from Norfolk, Virginia, on January 2 or 3, 1957 and told her to come to work (Tr. 64-65).[1] Miss Bruno, who had worked for petitioner before, said that she could not come that week but would come the following Monday (Tr. 65, 66). On January 7, 1957 Miss Bruno went by plane from Atlantic City to Norfolk (Tr. 63, 65). She called petitioner from the airport and was told where to go (Tr. 68-69). Thereafter she worked as a prostitute, giving half her earnings to petitioner or someone acting for petitioner (Tr. 71-72, 78-80). The judge charged the jury in part (Tr. 372):

> * * * The inducement sets in motion the successive acts which constitute the crime. If there was sufficient inducement rendered knowingly by the defendant Harms, and that defendant knew or should have known that interstate transportation by a common carrier of the particular prostitute involved would necessarily follow, it is sufficient to sustain a conviction if the prostitute in question thereafter engaged in her profession subsequent to any actual trip taken in interstate commerce for that purpose. * * *

ARGUMENT

Petitioner admits, for the purposes of the petition, that the evidence establishes that (1) she induced Miss Bruno to travel in interstate commerce in order to engage in prostitution and (2) Miss Bruno did travel by

[1] We are filing a copy of the transcript with the Clerk of the Court.

common carrier. Petitioner argues that nevertheless an offense under Section 2422 was not established because it was not shown that petitioner caused Miss Bruno to travel by common carrier, rather than by some other means of transportation. The court of appeals held (Pet. 24):

> * * * Having shown the knowing inducement or persuasion of Bruno to come from New Jersey to Virginia and the fact of the resultant trip by interstate carrier, the Government had covered the essential elements necessary to justify a conviction under Section 2422. It was not necessary for the Government to go further and attempt to show that Harms knowingly caused the victim to travel by common carrier either by direction or knowledge that the victim, Bruno, would use that mode of transportation. "Cause" is a word of very broad import and its meaning is generally known. See United States v. Kenofskey 243 U.S. 440. The knowing persuasion to make the interstate trip, of course, must be shown with some degree of particularity, but once the knowing persuasion has been shown, if the trip by interstate carrier follows, the offense is complete. * * *

This ruling is in accord with the decision of the Second Circuit in *United States* v. *Saledonis*, 93 F. 2d 302, rendered in 1937 before reenactment of the present statute in the revision of the Criminal Code in 1948. The continuation of the same language in the 1948 revision suggests that the *Saledonis* interpretation was accepted as a proper one.

The word "cause" is one of broad import. *United States* v. *Kenofskey*, 243 U.S. 440. In *Pereira* v.

United States, 347 U.S. 1, 8-9, this Court said, with respect to causing the use of the mails:[2]

> Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he "causes" the mails to be used." * * *

Under the evidence here, the jury could infer that the use of a common carrier by Miss Bruno was reasonably foreseeable, particularly since Miss Bruno had told petitioner she could not come the week petitioner called but would come the following Monday. Petitioner was therefore properly found guilty under 18 U.S.C. 2422.

CONCLUSION

The decision below is correct and involves no conflict of decisions or issue of importance. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

MALCOLM R. WILKEY,
Assistant Attorney General.

BEATRICE ROSENBERG,
Attorney.

JANUARY 1960.

[2] The Court was there speaking of the phrase "knowingly cause". 18 U.S.C. 1341 speaks in terms of "knowingly cause" and 18 U.S.C. 2 (the aider and abettor statute) in terms of "willfully cause."

☆ U. S. GOVERNMENT PRINTING OFFICE 1960—556126/P.O. 898